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TROJAN CAPITAL INVESTMENTS, LLC

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL JOSEPH RUFFNER,  
Debtor,

Case No. 8:17-bk-14421-ES

Chapter Number: 7

**REPLY IN SUPPORT OF MOTION FOR  
RELIEF FROM THE AUTOMATIC STAY  
UNDER 11 U.S.C. § 362**

Date: 02/01/18  
Time: 10:00 a.m.  
Ctm: 5 A

**TO THE HONORABLE ERITHE A. SMITH, JUDGE OF THE UNITED STATES  
BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA:**

Movant TROJAN CAPITAL INVESTMENTS, LLC, (“Movant” or “Trojan”) files the following Reply in support of its *Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* [Docket No. 10] (the “Motion”).<sup>1</sup>

**INTRODUCTION**

The Debtor has entirely failed to provide evidence of any lien release or payoff of his loan. Since the initial hearing on the Motion, the Court has also learned that the Debtor 1) is a

<sup>1</sup> This Reply is being filed one day after the Court’s deadline of January 25, 2018 with the gracious agreement of Debtor’s counsel.

1 convicted felon for securities fraud, and 2) has an unpaid judgment against other creditors for  
2 fraud in connection with his unlicensed contracting business.<sup>2</sup> When viewed in light of the  
3 Debtor's unpaid child support, civil and criminal judgments, and taxes, as indicated on his  
4 schedules, a picture emerges of something other than the "honest but unfortunate debtor." In any  
5 event, the Debtor's allegation of repaying a \$172,385 loan a year later for the (very) discounted  
6 amount of \$95,000 is simply beyond belief. The Motion should be granted, as the Debtor failed  
7 to prove repayment of his note with admissible evidence.

### 8 **ARGUMENT**

#### 9 **I. THE DEBTOR ADMITTED THE VALIDITY OF HIS DEBT TO TRINITY** 10 **UNDER PENALTY OF PERJURY**

11 The Debtor filed the instant bankruptcy case just two and a half short months ago, on  
12 November 8, 2017 [Docket No. 1]. On that day, the Debtor gave no indication that he disputed  
13 his debt or its validity. The Debtor's Schedule D indicates a debt of \$70,000 owed to Trinity  
14 Financial Services, LLC (Movant's affiliate and previous holder of the subject loan) as secured  
15 claim 2.4 [Docket No. 1 at 25], and a debt of \$177,500 owed to Movant as secured claim 2.5  
16 [*Id.*]. Neither claim has the box for "disputed" checked. The Debtor then signed his schedules to  
17 affirm their validity: "Under penalty of perjury, I declare that I have read the summary and  
18 schedules filed with this declaration and that they are true and correct." [Docket No. 1 at 49].

19 The Debtor also reaffirmed his debt to Trojan and Trinity on his *Statement of Intention for*  
20 *Individuals Filing Under Chapter 7* [Docket No. 1 at 62]. The Debtor listed both companies as  
21 holding secured claims against his residence. For each of the two creditors, he checked the box  
22 for "Retain the property and enter into a *Reaffirmation Agreement* [*Id.*]. The Debtor then again  
23 reaffirmed his debt to Trojan and Trinity: "Under penalty of perjury, I declare that I have  
24 indicated my intention about any property of my estate that secures a debt and any personal  
25 property that is subject to an unexpired lease." [Docket No. 1 at 63]. The Debtor has also recently  
26 amended his schedules [Docket No. 25], but did not amend anything regarding his debt to Trojan,  
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28 <sup>2</sup> See *Twitty v. Ruffner*, Case No. 8:18-ap-01014-ES, Docket No. 1

1 confirming the absence of a mistake in his original schedules.

2 As the Debtor affirmed under penalty of perjury on his schedules that Trojan's lien against  
3 the subject property is valid, he is estopped from attacking those admissions now. In *In re Presto*,  
4 376 B.R. 554, 565 (Bankr. S.D. Tex. 2007), the debtor listed a judgment debt to a creditor on his  
5 schedules, then amended his schedules without amending that scheduled debt. The debtor later  
6 attempted to attack the validity of the debt in a motion for summary judgment. *Id.* However, the  
7 court held that the Debtor was "judicially estopped from denying that" his creditor held a valid  
8 claim. *Id.* The reason for this ruling is that "[s]chedules and statements are signed under penalty  
9 of perjury. Fed. R. Bankr. P. 1008." *In re Rolland*, 317 B.R. 402, 414 (Bankr. C.D. Cal. 2004).

10 In this case, the Debtor clearly took out a loan for \$172,385 in 2006. On November 8,  
11 2017, he reaffirmed multiple times under penalty of perjury that he still owed this debt to Trojan.  
12 Months later, the Debtor has come to attack his prior position, but the Court should not  
13 countenance at this stage his late-filed reversal of position. The Debtor's credibility is  
14 particularly specious in light of his incarceration for securities fraud and the judgment against him  
15 for civil fraud.

## 16 **II. THE DEBTOR'S EVIDENCE OF A LOAN PAYOFF IS INADMISSIBLE**

17 Trojan is in possession of the original note from the Debtor's loan, and Trojan's affiliated  
18 entity, Trinity Financial Services, LLC, paid value to PNC Bank, N.A., National City Bank's  
19 successor, for the note. *See Supporting Declaration of Don A. Madden, III*, filed  
20 contemporaneously herewith. In contrast, the Debtor's proffered "evidence" that he paid off his  
21 loan the year after taking the loan out is inadmissible. Trojan objects to all of the Debtor's  
22 evidence.

### 23 **A. The Debtor's Exhibit A**

24 Exhibit A to the Debtor's *Declaration of Debtor Michael Ruffner in Support of Debtor's*  
25 *Opposition to Movant's Motion for Relief from Automatic Stay* [Docket No. 24] is a wholly  
26 illegible image of a cashier's check from Bank of America. The check lists no payee whatsoever,  
27 and the amount of the check is also completely illegible.

28 *///*

1           **B. The Debtor's Exhibit B**

2           The Debtor's Exhibit B is unauthenticated hearsay, and therefore inadmissible. The  
3 Debtor claims that Exhibit B is a letter from National City Bank regarding the closure of his  
4 account. However, the letter appears to be typed in the Calibri font (which is the default in  
5 Microsoft Word), and does not use the bank's typical letterhead or other formatting. Attached as  
6 **Exhibit A** is a genuine letter from National City Bank regarding a home equity line of credit  
7 account, taken from the court filings in the United States District Court for the Western District of  
8 Tennessee in the case of *Raeth v. National City Bank*, 2:09-cv-02812-JPM-tmp, Docket No. 1.  
9 The difference between the *Raeth* letter and the Debtor's purported letter is striking—the fonts,  
10 block formatting, and other aspects of the letter are wholly disparate. In particular, the Debtor's  
11 letter does not contain the bank's website address or identifying barcode.

12           In addition to the fact that the letter is not concordant with other letters from National City  
13 Bank, the letter contains typographical errors that would be unlikely to appear in a genuine letter  
14 from the bank. In particular, the letter contains the line “We appreciate the opportunity to help  
15 you mange your home asset” [sic]. “Mange,” rather than “manage.” It is highly unlikely that a  
16 large regional bank such as National City Bank would have such a typo in a form letter it created  
17 for mailing to thousands of customers.

18           **C. The Debtor's Exhibit C**

19           Lastly, the Debtor's Exhibit C purports to be a Form 1098 substitute, again somehow  
20 typed in Microsoft Word's default font of Calibri, purporting to list an Ending Balance of \$0.  
21 Notably, the form contains a “Property Address” section at the bottom that falls outside the  
22 boundaries of the form itself! Further, the Debtor's version of the form contains a number of  
23 entries that are not listed on a real Form 1098,<sup>3</sup> such as “Real estate taxes paid,” “Principal  
24 Reconciliation,” “Principal Applied,” “Ending Balance,” and “Late Charges Paid.” The Debtor's  
25 form even helpfully lists an “ending balance” of 0 for our purposes, though this field is notably  
26 absent from the Official Form 1098. The Debtor's version of Form 1098 thus goes considerably

27 \_\_\_\_\_  
28 <sup>3</sup> The IRS's Official Form 1098 is available at <https://www.irs.gov/pub/irs-pdf/f1098.pdf>. A copy of this form is  
attached to this Reply as **Exhibit B**.

1 beyond what an ordinary Form 1098 would do—merely report paid mortgage interest.

2 Assuming the Debtor’s Exhibit C is even a real substitute Form 1098, it does not serve as  
3 evidence that the Debtor paid off his loan. A tax form “‘does not itself operate to legally  
4 discharge a debtor’s liability,’ and thus ‘does not, standing alone, raise a genuine issue of material  
5 fact regarding [the Debtor’s] liability on the Note.’” *F.D.I.C. v. Cashion*, 720 F.3d 169, 177 (4th  
6 Cir. 2013) (quoting the trial court below with approval). Tax reporting forms are “a creditor’s  
7 required means of satisfying a reporting obligation to the IRS; it is not a means of accomplishing  
8 an actual discharge of debt, nor is it required only where an actual discharge has already  
9 occurred.” *Id.* at 179. Thus, a tax form is not an admission by a creditor that a debt has been  
10 paid, and “‘does not raise a genuine issue of material fact’ as to whether the debt had been  
11 cancelled.” *Id.* at 180.

12 In this case, the Debtor’s purported Form 1098 substitute, assuming it is a genuine form,  
13 does not raise a genuine issue of material fact that the Debtor paid off his loan. Further, the  
14 Debtor has failed to present a recorded lien release or any other documentation that show he  
15 discharged his debt to Trojan.

16 **III. THE DEBTOR’S CLAIMS ARE BEYOND THE SCOPE OF A STAY RELIEF**  
17 **PROCEEDING**

18 “Stay litigation is limited to issues of the lack of adequate protection, the debtor’s equity  
19 in the property, and the necessity of the property to an effective reorganization.” *Johnson v.*  
20 *Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985), *cert. denied*, 474 U.S. 828 (1985).  
21 “Hearings on relief from the automatic stay are thus handled in a *summary fashion*.” *Id.*  
22 (emphasis added). “The validity of the claim or contract underlying the claim is not litigated  
23 during the hearing.” *Id.* The court is “simply determin[ing] whether the creditor has a *colorable*  
24 *claim* to the property of the estate.” *Biggs v. Stovin (In re Luz Intern, Ltd.)*, 219 B.R. 837, 842  
25 (citing *Johnson*, 756 F.2d at 740) (emphasis added). That standard is met with a mere showing  
26 that a creditor “has an ownership interest in the subject property.” *In re Cruz*, 516 B.R. 594, 602  
27 (B.A.P. 9th Cir. 2014) (affirming lower court decision that creditor with an unrecorded trustee’s  
28 deed has standing to seek stay relief based on employee declaration that creditor purchased

1 property); *see also Edwards v. Wells Fargo Bank, N.A. (In re Edwards)*, 454 B.R. 100, 105 (9th  
2 Cir. 2011) (holding that Wells Fargo's recorded Trustee's Deed established a sufficient  
3 “colorable” claim to satisfy standing).

4 Here, the Debtor’s attempts to rebut Trojan’s possession of the subject Deed of Trust and  
5 Note come at an inopportune time. As outlined in the Motion and Supporting Declaration, by  
6 virtue of possession of the Deed of Trust and Note, Trojan has clearly established an ownership  
7 interest in the subject property, and therefore a colorable claim. Courts normally overrule debtor  
8 title and ownership claims brought up at the stay relief stage, so long as this standard is met by  
9 the moving creditor. *See, e.g., In re Silva*, No. 9:10-BK-14135-PC, 2015 WL 1259774, at \*1  
10 (Bankr. C.D. Cal. Mar. 17, 2015) (overruling without consideration the borrower’s objection  
11 that the movant lacked standing); *In re Junk*, 512 B.R. 584, 606 (Bankr. S.D. Ohio 2014) (lifting  
12 stay to permit foreclosure despite borrowers’ adversary proceeding raising TILA and standing  
13 claims). Additionally, despite the Debtor’s protestations, Trojan’s supporting declaration and  
14 copy of the subject Note “provide an adequate verification that [Trojan] possessed the Note,  
15 which was endorsed in blank . . . Therefore, it determined that [Trojan] established, for purposes  
16 of stay relief, that it was a holder of the Note.” *In re Griffin*, No. BAP WW-11-1362-HKIJU,  
17 2012 WL 1191894, at \*5 (B.A.P. 9th Cir. Apr. 6, 2012), *aff’d*, 719 F.3d 1126 (9th Cir. 2013)  
18 (affirming grant of stay relief despite bankruptcy trustee’s argument that movant creditor lacked  
19 the original promissory note).

20 In this case, Trojan has met its evidentiary burden for obtaining relief from stay. If the  
21 Debtor wishes to further litigate his questionable claim of note payoff, he should proceed to  
22 state court.

23 ///

24 ///

25 ///

26 ///

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28 ///

**CONCLUSION**

For the foregoing reasons, Movants submit that the Motion should be granted.

Dated: January 26, 2018

BURKE, WILLIAMS & SORENSEN, LLP

By: 

Richard J. Reynolds  
Rafael R. Garcia-Salgado  
Attorneys for Creditor  
TROJAN CAPITAL INVESTMENTS,  
LLC

# **Exhibit A**



# **EXHIBIT A**

Case 2:09-cv-02812-JPM-tmp Document 1-1 Filed 12/14/09 Page 2 of 11 PageID 24

## National City.

National City Bank  
P. O. Box 5570, Cleveland, OH 44101-0507

ERWIN A RAETH  
ERICKA RAETH

3714

|||||

August 21, 2009

Dear Erwin A Raeth and Ericka Raeth,

As you may know, home values in many areas of the country have declined. Because home value directly impacts the credit limit available on a home equity line of credit ("Line"), National City is reviewing and analyzing the values of the homes that secure the Lines it services. Consistent with this process, and as permitted by the agreement for your Line ("Agreement"), we have reviewed the value of the property securing your Line.

Our latest valuation, using an automated valuation method (AVM), has estimated that the value of the property securing your Line is currently \$32,100.00. That valuation reflects a significant decline in the value of your property from its value when your Line was originated. Therefore, in accordance with the terms of your Agreement, further draws against your account are being suspended.

We appreciate that you have handled your home equity account responsibly and want to make sure you know this change is being made simply because your home's value has declined. We apologize for any inconvenience this may cause and are willing to work with you to help you to determine the best option for your situation.

What does this mean for you?

1. Effective three business days from the date of this letter, you will not be able to draw on the Line and Advances requested by check or by other methods, including Fixed-Rate Lock Advances and credit card purchases, if applicable, will not be paid or honored. You will not be able to use checks or the credit card, if applicable, that you may have received previously. You will continue to receive a monthly statement that will include current payment information, and you should continue to make timely payments on any balance owed under your Line in accordance with your Agreement.
2. This action will not affect arrangements for automatic deduction to make payments on your Line.
3. If you use your Line to automatically pay other bills, you should advise the payee(s) and provide an alternate method for payment.
4. You may regain access to your Line upon request if there is evidence that your property value has sufficiently increased, or if you disagree with the AVM valuation, based on evidence that the property value has not significantly declined. Any reinstatement request will be subject to review and the other terms and conditions of your Agreement. The terms include the right to continue the suspension or to terminate drawing privileges if any other condition permitting those actions exists, such as delinquency in payment requirements.

We have included some answers to frequently asked questions on the following page for your reference. If you have any additional questions or wish to request reinstatement, please contact one of our Customer Service Representatives at 1-877-389-6262 Monday through Friday between the hours of 8:00 A.M. and 7:00 P.M. EST.

Sincerely,  
Mortgage Services Customer Service Call Center

Continued on the reverse side.

**QUESTIONS?** NationalCity.com  
1-877-389-6262  
Hours: Monday - Friday 8 a.m. to 7 p.m. EST.

**Answers to some questions you may have:**

**Q: Why is this action being taken at this time?**

- A: Home values have declined in many parts of the country, including your area. The analysis of your property value resulted in the temporary suspension of additional advances as permitted under your Agreement.

**Q: How was the new value for my home obtained?**

A: The value we used is from an Automated Valuation Method (AVM) commonly used for property valuations. An AVM is an automated appraisal method providing a value for a property based on historical data and projected property values.

**Q: I wrote some checks before I received your letter. What happens to them?**

A: Unfortunately, checks that we received for processing on or after the effective date of the suspension will not be paid. If this action creates a personal financial hardship for you, please contact us at 1-877-389-6262 and we will try to work with you. You must contact us within 30 days of the date of this letter.

**Q: I had planned to use my Line for a major expense (home improvements, etc.) this month. What should I do?**

A: Give us a call at 1-877-389-6262 within 30 days of the date of this letter and we will try to work with you if this action creates a personal financial hardship. For example, if you're in the middle of a major home improvement project, please provide us with a copy of a signed contractor statement so we can review what amounts are still due on the project. Please be prepared to share documentation with us.

**Q: When will I be able to access my Line again? How do I remove the temporary suspension on my account? What if I think my house is worth more than the AVM valuation shown in this letter?**

A: The AVM value that was used on your property should be a true reflection of the market value of this property. Reinstating access to your Line can be considered upon your providing a request for reinstatement, along with a complete current appraisal of your property. The cost of the appraisal will not be reimbursed. Please contact us at 1-877-389-6262 to initiate the request process and make arrangements for an appraisal.

**Q: My taxes just went up. How could my home value have come down?**

A: You will need to contact your local Taxing Authority on how your home is valued for tax purposes.  
Note: Please include your full name and your Line's account number with any documentation or correspondence with us.

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## **EXHIBIT B**



Case 2:09-cv-02812-JPM-tmp Document 1-1 Filed 12/14/09 Page 5 of 11 PageID 27

**National City**

**EQUITY RESERVE™ AGREEMENT – NATIONAL HOME EQUITY**  
(Not to be Used for Lines Secured by a Texas Homestead)

Date: 2/23/2005

Account No.

You, the undersigned, are opening an Equity Reserve Line of Credit (Line) with National City Bank (Bank) and agree that the following terms and conditions will apply to your Line.

**Line of Credit.** Your Line is an open-end line of credit which you may use to obtain cash advances (Advances) from time to time for a period of 10 years (Draw Period). If you continue to meet Bank's then current credit and collateral value criteria, at Bank's discretion, Bank will either extend the Draw Period for one or more additional Draw Periods or Bank may refinance your Line on the terms then being offered by Bank for Equity Reserve Lines of Credit. If your Draw Period is not renewed or the Line is refinanced, you may repay any outstanding balances during the Repayment Period as provided in the Payment section below. The initial amount of your Line is \$ 35,000.00 (Credit Line). You have the option anytime during the Draw Period of this Agreement to create Fixed Rate Partitions of all or part of your Line at a fixed rate and for a fixed payment. The Fixed Rate Partition (FRP) balance includes the partition advance fee. Any amount you repay on the Line and/or on an FRP will be again available to you on the Line until the end of the Draw Period. Bank may reduce the amount of your Credit Line under certain conditions described in this Agreement.

**Advances.** You may obtain Advances under your Line by issuing Equity Reserve checks and special FRP checks (Checks) supplied by Bank, or by way of any other Bank approved plan. Bank will charge your Checks directly against your Line. You may make arrangements for an Advance on your Line to pay off any FRP as any time by contacting Customer Service at the address or phone number on your statement. You should notify Bank when you need more Checks. The minimum FRP Advance that you can receive using an FRP Check is \$5,000. FRP checks for less than \$5,000 will be charged against your Line. You should also notify Bank immediately if your Checks are lost or stolen. (Please see the "Stop Payment Orders" section of this Agreement). Your statement will list Checks that have been paid, but the actual paid Checks will not be returned to you. You may request copies of paid Checks from the Bank, and a copying fee may be charged.

Bank may issue you a Card or Cards for use with the Line. Credit card access is not offered in Connecticut, New York and Texas and may not be offered in other states. The word Card can mean one or more credit cards or Automated Teller Machine (ATM) cards. You authorize Bank to issue you a Card for use with the Line. You may purchase goods or services from merchants who honor the Card. You may obtain Advances from Bank or any other financial institution that honors the Card. You may also obtain Advances by using a Personal Identification Number (PIN) for telephone banking or on-line banking Advances. Bank will charge all Advances to your Line. If you allow someone else to use your Card or PIN and you want to stop such use, you must let Bank know in writing. If he or she has a Card or PIN, you must return the Card with your written notice and/or request a new PIN. You must notify Bank immediately if your Card or PIN are lost or stolen, or you believe that some person may be using your Card(s) or PIN without permission. You will not use your Line after notifying Bank of loss, theft or unauthorized use of your Card(s) or PIN. You will not be held liable for any unauthorized use of the Card or PIN after you have notified Bank of the loss or theft by phone at 1-800-333-6596 or in writing at National City Card Services, P.O. Box 4092, Kalamazoo, Michigan 49003. (Otherwise you may be liable, but not for more than \$50.) Bank may terminate the use of your Card or PIN if you lose your Card or PIN two times or more in a twelve month period. Bank may also terminate the use of your Card or PIN if your new balance exceeds your Credit Line by 2% or if you are over limit for more than one billing cycle.

Bank will have no obligation to honor any Advance by any means if the resulting new balance of your Line would exceed your Credit Line; or after the Draw Period ends; or in the event of termination or suspension of your Credit Line under the conditions described in this Agreement; and upon Bank's request you will return Checks and/or Cards. Your Line may not be used for interest, lottery, betting or gambling transactions or for any illegal transactions.

**Charges from foreign merchants and financial institutions may be made in a foreign currency.** We will bill you in U.S. Dollars based on the exchange rate on the day we settle the transaction, plus any special currency exchange charges. In the case of VISA-Accounts: The exchange rate applied to each transaction is (A) wholesale market rate or (B) government-maintained rate, in effect one day prior to the processing date, increased by one percent. Because of the special charges and possible differences in exchange rates between the time we settle and the time you initiated the transaction, the total charge for a foreign transaction may be greater than the cash advance or purchase at the time it was made.

**Finance Charge for Line and Fixed Rate Partition Advances and During the Repayment Period**

**a) Line Advances:** Bank figures the finance charge on your Line by applying the periodic rate to the "average daily balance" of your Line. To get the "average daily balance", Bank takes the beginning balance of the Line each day, adds any new Advances including if applicable, the broker and processing fees, and other debits, and subtracts any payments or credits and unpaid periodic finance charges. This gives the daily balance. Then, Bank adds up all the daily balances for the billing cycle and divides the total by the number of days in the billing cycle. This gives the "average daily balance". Advances are subject to finance charges from the date of transaction to the date payment is posted to the Line. The periodic rate of finance charge and the annual percentage rate are subject to change, based on the value of an index. The index in effect for each billing cycle shall be the "Prime Rate" of interest appearing in the Money Rates Table of The Wall Street Journal published on the first day of your billing cycle (or, if not published on that date, the last edition published prior to that date), rounded upward, if necessary, to the nearest .01% (Line Index).

The **ANNUAL PERCENTAGE RATE** is the Line Index plus 0.000 %. The **FINANCE CHARGE** for each billing cycle shall be computed at the annual percentage rate divided by 12. The current periodic rate of **FINANCE CHARGE** is 0.458 % per month, which corresponds to an **ANNUAL PERCENTAGE RATE** of 5.500 %. The annual percentage rate and the periodic rate of finance charge may increase if the Line Index increases. In the event of an increase, the finance charge will increase and the minimum payment amount may increase. An increase or decrease in the annual percentage rate will result in a corresponding increase or decrease in the minimum payment amount.

**b) Fixed Rate Partition Advances:** Bank figures the finance charge on each FRP by applying the periodic rate to the "average daily balance" of the FRP. To get the "average daily balance", Bank takes the beginning balance of the FRP each day and subtracts any payments or credits and unpaid periodic finance charges. This gives the daily balance. Then, Bank adds up all the daily balances for the billing cycle and divides the total by the number of days in the billing cycle. This gives the "average daily balance". Each FRP is subject to finance charges from the date of the transaction until paid in full. The periodic rate of finance charge and the annual percentage rate are determined and fixed on the business day the transaction posts to your Line. The index shall be the daily rate for 3 year Treasury notes with constant maturities for the 10th business day prior to the last business day of the calendar month preceding the month in which the transaction posts to your Line, rounded upward, if necessary, to the nearest .01% (FRP Index). The FRP Index can be found in the Federal Reserve Statistical Release H 15 at [www.federalreserve.gov/releases/h15](http://www.federalreserve.gov/releases/h15).

The **ANNUAL PERCENTAGE RATE** is the FRP Index plus 3.750 %. The **FINANCE CHARGE** for each billing cycle shall be computed at the annual percentage rate divided by 12. The current periodic rate of **FINANCE CHARGE** is 0.597 % per month, which corresponds to an **ANNUAL PERCENTAGE RATE** of 7.160 %.

**c) Both Line and Fixed Rate Partition Advances:** In no event shall the periodic rate of **FINANCE CHARGE** be more than 1.50% per month or less than 0.25% per month and in no event shall the **ANNUAL PERCENTAGE RATE** be more than 18.0% or less than 3.0%. The annual percentage rate includes only interest and not other costs. Your monthly statement will disclose the applicable annual percentage rate for the billing cycle.

**d) Repayment Period.** Any outstanding Line balance and Other Charges will be converted to a Fixed Rate Partition balance on the last business day of your Draw Period and will be subject to finance charges for a Fixed Rate Partition as stated in subsections (b) and (c) above. The index value is the FRP Index on the 10th business day prior to the last business day of the calendar month preceding the month in which the Draw Period ends rounded as provided in subsection (b) above.

**Other Finance Charges**

A broker fee **FINANCE CHARGE** of \$ 0.00

A processing fee **FINANCE CHARGE** of \$ 0.00

A Partition Advance fee **FINANCE CHARGE** of \$50 for each Fixed Rate Partition used

NHBAGMT1 (07/04)



ERA-MULTI-V1\_1

*Signature*

**Other Charges.** In addition to finance charges, the following other charges will apply:

- An annual fee of \$50 reflected on the monthly statement for the first billing cycle of each year of your Draw Period beginning with the 13<sup>th</sup> billing cycle, whether or not you obtain Advances under your Line. This fee is not refundable.
- A late payment fee of the greater of 10% of the unpaid minimum payment or \$40, if Bank does not receive your minimum payment at the address shown on your statement within 10 days of the Due Date. Bank may charge an additional late payment fee for each billing cycle that your Line is past due.
- An over limit fee of \$25 whenever you go over your Credit Line. Bank may charge an additional \$25 for each billing cycle that you remain over your Credit Line.
- A returned payment fee of \$25 if you make a payment on your Line which is returned to Bank unpaid because of insufficient funds, a closed account, stop payment, or any other reason.
- A returned check fee of \$25 if you write a Check that Bank dishonors under the "Advances" section of this Agreement.
- A stop payment fee of \$25 for the service of stopping payment on a Check and a \$25 service fee for renewal of each stop payment order.
- An early termination fee of \$\_\_\_\_\_ 0.00. If you close your Line within the first 36 months.
- A document request fee of \$6 per copy for service of providing copies. Bank will not charge you for documents Bank is required to give you by law.
- Any real estate related closing fees due at the closing of your Line are reflected on the HUD-1 settlement statement provided to you by the closing agent and which is hereby incorporated and made part of this Agreement by this reference.

Bank does not lose any of its other rights under this Agreement whether or not it charges late payment or over limit fees. The application of any fee shall not cause the default which initiated the fee.

**Security Interests.** Your Line will be secured by a mortgage (Mortgage) on your dwelling (Dwelling). If the Dwelling is your primary or secondary residence, you represent and warrant to Bank that at all times during the term of this Agreement your Dwelling, or a minimum of one unit of your multi-unit Dwelling, shall be occupied by you and shall not be used as rental property. Bank agrees to waive any security interest in the Dwelling to the extent it secures Advances which may be in excess of your Credit Line. You name Bank as loan payee and beneficiary of the proceeds of, and assign to Bank any unearned premiums of, all insurance connected with your Line. You must not adversely affect Bank's interest in the Dwelling by any action or inaction. You must keep the Dwelling in good condition, promptly pay all mortgages and other liens against the Dwelling, and promptly pay all taxes and assessments on the Dwelling. You must not sell or transfer title to the Dwelling without Bank's permission, or use the Dwelling for any illegal purpose.

**Property Insurance.** You must keep the Dwelling fully insured against loss or damage on terms which are acceptable to Bank to the extent permitted by law. You must carry flood insurance if required by federal law. You may obtain property insurance or furnish existing property insurance from anyone that is acceptable to Bank provided the insurer is authorized to do business in the state or jurisdiction where the Dwelling is located or is an eligible surplus lines carrier. You agree to furnish Bank with written evidence of such insurance, with Bank named as loan payee and proof of payment of insurance premiums. If you fail to do so, Bank may buy insurance to protect Bank's interest and add the premium cost to the unpaid balance of your Line, subject to the same finance charges as Advances against your Line. You assign to Bank the proceeds from any such insurance policies up to the unpaid balance of your Line. Bank may apply such proceeds, including any return of unearned premiums and payment for claims under such policies, to reduce the unpaid balance of your Line. You irrevocably authorize Bank as your agent and on your behalf to negotiate, settle and release any claim under your insurance and to submit insurance claims for you and to receive and sign your name to any checks or drafts or related papers obtained from insurance companies.

**Tax Deductibility.** You should consult a tax advisor regarding the deductibility of interest and charges on your Line.

**Statements.** Bank agrees to mail or deliver to you a monthly statement for each billing cycle at the end of which there is a balance which is a debit or credit balance of more than \$1 or on which a finance charge has been imposed. The balance is the sum of all outstanding Advance(s), fees, payments, other credits, other charges and debits, and finance charges.

**Payments.** Your payments will be due monthly. You may pay the entire unpaid balance of your Line and/or your FRP(s) at any time. You are required to pay a minimum payment by the Due Date shown on your statement equal to the sum of the Line Minimum Payment and the FRP Minimum Payment for each FRP in use.

a) **Line Minimum Payment:** The Line Minimum Payment will equal the periodic finance charges that accrued on the outstanding Line balance during the preceding billing cycle as shown on each monthly statement (Interest Only Minimum Payment).

b) **The FRP Minimum Payment is:** A fixed payment amount that is sufficient to pay off the Prepaid Advance Fee, the balance and periodic finance charges for each FRP, if one hundred twenty (120) equal payments at the fixed rate applicable to that FRP were made. Any amount still owing after one hundred nineteen (119) billing cycles will be added to the final minimum payment due. Additional payments on any FRP may be made at any time but you will continue to be obligated to make the fixed payment for the FRP as long as any amount is still owing on the FRP. The amount of any reduction in principal from a payment on an FRP will become available to you on your Line once it is posted, until the end of the Draw Period. If your Draw Period is not renewed then access to the Line will not be available during the Repayment Period.

c) **Repayment Period:** The Minimum Payment may not fully repay the principal that is outstanding by the end of the Draw Period. If your Draw Period is not renewed for an additional term, during the Repayment Period you may continue to make scheduled payments on any Fixed Rate Partition balances outstanding at the end of the Draw Period until they are paid in full. Additionally, any outstanding line balance and Other Charges will be converted to a Fixed Rate Partition balance without a Partition Advance fee on the last business day of your Draw Period and will be subject to finance charges for a Fixed Rate Partition, and will be required to be repaid in one hundred twenty (120) equal monthly payments for balances of \$5,000 or more, or sixty (60) equal monthly payments for balances of less than \$5,000. Any amount still owing after one hundred nineteen (119) billing cycles or after fifty nine (59) billing cycle respectively, will be added to the final minimum payment due.

Payments will be applied in the following order: First, to each FRP on a first in-first out basis for all unpaid periodic finance charges and then to the FRP's principal balance as an amount necessary to amortize the FRP within its amortization schedule, then to all unpaid periodic finance charges on the Line, then to all Other Charges, then to the Line. For introductory and promotional offer balances, payments to the Line are applied on the basis of the lowest rate balance first to highest rate balance last. If there are no balances on the Line, overpayments are applied as a prepayment to the FRP(s) on a first in-first out basis. If there are no balances on any FRP or on the Line, overpayments are credited to the Line and returned upon request. In order to make additional partial prepayments to an FRP or to prepay an FRP in full without paying off your Line, you must contact Customer Service to make arrangements to do so.

**Stop Payment Orders.** We agree to honor a stop payment order against a Check when received from you within a reasonable time prior to payment. A stop payment order becomes effective after we have actually received the order and had a reasonable time to process it, and the order will remain in effect for thirteen months. Our acceptance of a stop payment order does not mean that the Check has not yet been paid, and we shall have no liability resulting from the payment of a Check before your stop payment order becomes effective. A stop payment order may be renewed for successive periods equal to its original period of effectiveness if we receive a renewal notice prior to the order becoming ineffective.

A stop payment order against a Check must accurately describe it as to date, number, amount, and payee, and must correctly state your name and the Account number. You agree that it is current industry standard to process stop payment orders by means of computer technology. Accordingly, your failure to provide the exact identification of Account number and Check number in order to identify the Check to be stopped will result in the Check being paid if presented, and we will not be liable for such payment. Errors in your name or the Account number, or inaccuracies in the description of the number, amount, name title or payee on your written stop payment order shall relieve us from any liability for any minimum payment or wrongful dishonor. Any errors on our written acknowledgment to you of a stop payment order, must be reported by you in writing to our Customer Service Department within 10 calendar days of the written acknowledgment date. We shall not be liable for any mistakes payment or wrongful dishonor occurring after the 10-day period, unless errors or inaccuracies are so reported to us within the 10-day period.

Before we will release a stop payment order, our Customer Service Department may require the receipt of a written request, signed by you, requesting the withdrawal of the order.

In the event we recredit the Account for a paid Check, then you hereby assign to us all rights against third parties. You or any joint account holder may order a stop payment. You agree that we will not be obligated to reimburse you immediately upon notice of alleged wrongful payment, that it is your obligation to prove the fact and amount of damage suffered, and that in no case will we be liable for more than your actual damage.

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*Handwritten signature*



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We shall not be liable for any damages unless we have failed to act in good faith and exercise ordinary care. You agree to indemnify us and hold us harmless from any and all expenses incurred or damages suffered by us in honoring a stop payment order.

To place a stop payment order, write to National City, Equity Reserve Stop Payment Department, 4661 E. Main Street, Columbus, Ohio 43251-0928.

**Termination of Line.** Bank can terminate your Line and require you to pay the entire outstanding balance in one payment if you breach a material obligation of this Agreement in that:

- You engage in fraud or material misrepresentation in connection with your Line.
- You do not meet the repayment terms of this Agreement.
- Your action or inaction adversely affects the collateral or Bank's rights in the collateral.

To the extent permitted by 11 USC 506, Bank shall be entitled to reasonable court costs and attorneys' fees for independent counsel that Bank hires (unless you are a resident of New Hampshire, in which case we may not recover our attorneys' fees from you). Interest after termination, whether prior to or after judgment by a court of competent jurisdiction, shall accrue upon the outstanding unpaid balance at the rate determined under this Agreement until such balance is paid in full.

**Suspension or Reduction of Credit Line.** Bank can refuse to make additional extensions of credit or reduce your Line if you breach a material obligation of this Agreement in that:

- The value of the Dwelling securing your Line declines significantly below its present appraised value for purposes of the Credit Line.
- Bank reasonably believes you will not be able to meet the repayment requirements due to a material change in your financial circumstances.
- You are in default of a material obligation under this Agreement.
- Government action prevents the Bank from imposing the annual percentage rate provided for or impairs the Bank's security interest such that the value of the interest is less than 120 percent of the Credit Line.
- A regulatory agency has notified the Bank that continued Advances would constitute an unsafe or unsound practice.
- The maximum annual percentage rate is reached.

If your Line is suspended and you have used any FRP(s) then at Bank's option Bank may terminate the FRP(s) and transfer any FRP balances to your Line. Bank will give you written notice of any such action and conditions for reinstating your credit privileges. Bank may reinstate your credit privileges when the conditions leading to suspension are cured to Bank's satisfaction. Bank may require you to request reinstatement of credit privileges when the conditions leading to suspension or reduction of your Credit Line no longer exist. An additional title examination and other documentation may be required to reinstate your Line, and any costs associated with reinstatement will be paid by you where permitted by law.

**Change in Terms.** Bank may change certain terms of this Agreement at any time by giving you 15 days prior notice:

- The index and margin used for this Line if the original index is no longer available.
- A change that you specifically agree to.
- A change that benefits you.
- An insignificant change.
- Other changes permitted by applicable law.

Any change in terms will apply to balances outstanding on the effective date of the change as well as to balances generated thereafter.

**Other Provisions.** You shall promptly notify Bank of any change in circumstances which has a substantial adverse effect on your credit. You will furnish Bank with financial statements in a form satisfactory to Bank as Bank may request from time to time. Bank may also require a title examination and/or appraisal from time to time, the cost of which will be paid by you where permitted by law.

If this Agreement is signed by more than one borrower, each of you may draw Checks on the Line or use the Cards, and each and every borrower is jointly and severally liable for all Advances and charges on the Line. Any of you may direct Bank to not make further Advances on the Line, however, reinstatement will only be made on the joint request of all of you.

Your rights in your Line may not be assigned. The Mortgage may not be assumed by a subsequent purchaser of the Dwelling. All fees paid to Bank are not refundable.

All of Bank's rights under this Agreement are valid to the extent permitted by applicable law. If it is determined for any reason that any part of this Agreement is invalid or unenforceable, this shall not affect the validity or enforcement of any other provision, and this Agreement will then read as if the invalid or unenforceable part were not there.

Bank may delay exercising any of its rights under this Agreement without losing them. We may accept late payments or partial payments without losing any of our rights. If your payment is marked with the words "Paid in Full" or similar language, you must send your payment to National City, 6750 Miller Road, Brookville, Ohio 44141, Locator No. 7187. If your payment is made to any other address, we may accept the payment without losing any of our rights.

You understand that Bank is a national bank located in Ohio, and that Bank's decision to extend the Line to you was made in Ohio. Therefore, this Agreement and your use of the Line, Credit Line, and Checks, shall be governed by and construed in accordance with (a) Federal laws and regulations including but not limited to 12 USC § 85 and (b) the laws of Ohio, to the extent Ohio laws are not preempted by federal laws or regulations, and without regard to conflict of law principles.

The annual IRS Form 1098 will be issued only to the first borrower listed on this Agreement at origination and the designation of a borrower as first cannot be changed subsequently.

An electronic or optically imaged reproduction of this Agreement or any other document related to your Loan constitutes an original document and may be relied on in full by all parties to the same extent as an original.

You can change any term of this Agreement only in a writing signed by us.

From time to time, we may offer you special rates for balance transfer transactions or introductory or promotional offers on your Line. If we do, we will advise you of the annual percentage rates and finance charges associated with the special rate offer, how long they will be in effect, the balances to which they will apply, and other terms of the special rate offer. Any special rate offer will be subject to the terms of the offer and this Agreement.

Except as otherwise prohibited by law, Bank may provide to others, including but not limited to, consumer credit reporting agencies, information about our transactions and experiences with you. Also, Bank and its affiliates (collectively "National City") may share with each other all information about you for the purposes, among other things, of evaluating credit applications or offering products and services that National City believes may be of interest to you. Under the Fair Credit Reporting Act there is certain credit information that cannot be shared about you (unless you are a business) if you tell National City by writing to National City Corporation, Attention: Office of Consumer Privacy, P.O. Box 4868, Kalamazoo, MI 49009. You must include your name, address, Line (account) number and social security number.

You agree that you and Bank have an established business relationship, and unless otherwise prohibited by law, that National City may contact you to offer you products and services that National City thinks may be of interest to you. Such contacts are not unsolicited, and National City may contact you with an automated dialing and announcing device or by fax, email or other form of electronic communication and we may monitor telephone calls with you to assure quality service.

In this Agreement, the term "affiliates" means current and future affiliates of Bank, including, but not limited to, the following National City Corporation subsidiaries: National City Bank of Indiana, National City Bank of Michigan/Illinois, National City Bank of Pennsylvania, National City Bank of Southern Indiana, National City Home Loan Services, Inc., First Franklin Financial Corporation, National City Bank of Kentucky, Madison Bank and Trust Company, National City Mortgage Co. and National City Mortgage Services Co.

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*[Handwritten signatures and initials]*

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You are hereby notified that a negative credit report reflecting on your credit record may be submitted to a consumer credit reporting agency if you fail to fulfill the terms of your credit obligations. If you believe that we have information about you that is inaccurate or that we have reported or may report to a credit reporting agency information about you that is inaccurate, please notify us of the specific information that you believe is inaccurate by writing to National City, P.O. Box 94982, Cleveland, Ohio 44101, Attn: Credit Bureau Disputes, Locater 7113.

**NOTICES.** The following notices are given by Bank only to the extent not inconsistent with 12 U.S.C. Section 85 and related regulations and opinions, and/or the choice of law provision set forth herein (with respect to which Bank expressly reserves all rights). You acknowledge receipt of the following notices before becoming obligated.

If the Dwelling is located in California: Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the Property.

If the Dwelling is located in Colorado: If your payments are received after the due date, even if received before the date a late fee applies, you may owe additional and substantial money at the end of this credit transaction and there may be little or no reduction of principal. This is due to the accrual of daily interest until a payment is received.

If the dwelling is located in Connecticut: Your initial Draw Period will be 9 years 10 months and cannot be renewed for additional draw periods.

If the Dwelling is located in Florida: FLORIDA DOCUMENTARY STAMP TAX IN THE AMOUNT REQUIRED BY LAW HAS BEEN PAID OR WILL BE PAID DIRECTLY TO THE DEPARTMENT OF REVENUE, AND FLORIDA DOCUMENTARY STAMPS HAVE BEEN PLACED ON THE TAXABLE INSTRUMENTS AS REQUIRED BY CHAPTER 201, FLORIDA STATUTES.

If the Dwelling is located in Maryland: We elect Subtitle 9, Credit Guaranty Open End Credit Provisions, of Title 12 of the Commercial Law Article of the Annotated Code of Maryland.

If the Dwelling is located in Minnesota: If the amount of the Loan is \$100,000 or more, we elect Minn. Stat. § 334.01.

If the Dwelling is located in Missouri: Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect you (borrower(s)) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.

If the Dwelling is located in New York: YOU SHOULD CHECK WITH YOUR LEGAL ADVISOR AND WITH OTHER MORTGAGE LIEN HOLDERS AS TO WHETHER ANY PRIOR LIENS CONTAIN ACCELERATION CLAUSES WHICH WOULD BE ACTIVATED BY A JUNIOR ENCUMBRANCE.

**DEFAULT IN THE PAYMENT OF THIS LOAN AGREEMENT MAY RESULT IN THE LOSS OF THE PROPERTY SECURING THE LOAN. UNDER FEDERAL LAW, YOU MAY HAVE THE RIGHT TO CANCEL THIS AGREEMENT. IF YOU HAVE THIS RIGHT, THE CREDITOR IS REQUIRED TO PROVIDE YOU WITH A SEPARATE WRITTEN NOTICE SPECIFYING THE CIRCUMSTANCES AND TIMES UNDER WHICH YOU CAN EXERCISE THIS RIGHT.**

If the Dwelling is located in North Dakota: THIS OBLIGATION MAY BE THE BASIS FOR A PERSONAL ACTION AGAINST THE PROMISOR OR PROMISORS IN ADDITION TO OTHER REMEDIES ALLOWED BY LAW.

If the dwelling is located in Oregon: **NOTICE TO THE BORROWER:** Do not sign this loan agreement before you read it. The loan agreement may provide for the payment of a penalty if you wish to repay the loan prior to the date provided for repayment in the loan agreement.

If the Dwelling is located in Texas: **THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

If the Dwelling is located in Vermont: **NOTICE TO CO-SIGNER:** YOUR SIGNATURE ON THIS NOTE MEANS THAT YOU ARE EQUALLY LIABLE FOR REPAYMENT OF THIS LOAN. IF THE BORROWER DOES NOT PAY, THE LENDER HAS A LEGAL RIGHT TO COLLECT FROM YOU.

**COPY RECEIVED** You agree to be legally bound to all provisions of this Agreement. You acknowledge receipt of a completed copy of this Agreement, including important information below regarding your rights to dispute billing errors ("Your Billing Rights").

BERNIE A. RAE TH

TYPE OR PRINT NAME

BERNIE A. RAE TH

TYPE OR PRINT NAME

TYPE OR PRINT NAME

TYPE OR PRINT NAME

Address of Dwelling:

X SIGNATURE

X SIGNATURE

X SIGNATURE

X SIGNATURE

X SIGNATURE

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**YOUR BILLING RIGHTS - KEEP THIS NOTICE FOR FUTURE USE**

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

**Notify Us In Case of Errors or Questions About your Bill**

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us on a separate sheet at the address listed on your bill. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and Line number
- The dollar amount of the suspected error
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your bill automatically from your savings or checking account, you can stop payment on any amount you think is wrong. To stop the payment, your letter must reach us three business days before the automatic payment is scheduled to occur.

**Your Rights and Our Responsibilities After We Receive Your Written Notice**

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your Credit Line. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within 90 days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

**Special Rule for Credit Card Purchases**

If you have a problem with the quality of property or services that you purchased with your Card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

- (a) You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current mailing address; and
- (b) The purchase price must have been more than \$50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

REGARDING CARD PURCHASES

*[Handwritten signature and initials]*

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## **EXHIBIT C**

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Erwin & Erika Raeth

## Erwin A. Raeth and Erika J. Raeth

April 28, 2009

To:  
Via Fax: 440-546-6853 and 216-575-2983  
National City Bank  
1900 East Ninth Street  
Cleveland, OH 44114-3484  
United States

### Our Home Equity Line of Credit

Dear Sir or Madam,

With your letter dated April 21<sup>st</sup>, 2009 you have frozen our home equity line of credit that had a zero balance at this point in time.

While you assert that the value of our home has decline to \$332,100, you have overlooked that over the past four years we have paid down our 30 year fixed rate mortgage to a balance of \$265,300, leaving \$66,800 as equity in our home based on your assertion of our homes value. This amount is more than enough to secure our home equity line of credit.

Furthermore our credit is impeccable; Erwin A. Raeth's FICO score is 802 or higher than 99.92% of consumers (see attachment). Our mortgage payment is 12.5% of our household gross income and that after our employer eliminated annual incentive compensation, the annual merit increase and instituted a 5.0% pay cut. Our fixed rate mortgage is our only debt, we have no consumer debt and obviously our HELOC was not drawn. In addition to that we own a substantial amount of financial assets that could pay off our existing credit line with your bank many times over.

As you can see from your records, we have drawn many times over the last four years on our HELOC and paid it off to a zero balance within months, demonstrating excellent and responsible use of such a facility.

We ask you, based on our credit agreement, to immediately re-instate our home equity line of credit of \$35,000.

If you will no re-instate our credit line within 10 business days from the date of this letter, I will consider legal action against your bank. Additionally I will contact Senator Lame Alexander, Senator Bob Corker and my congresswoman Marsha Blackburn to investigate the lending practices of your organization and your use of TARP funds. If you remove credit lines from the best creditors available, I only dare to think what you do to creditors with sub-optimal credit.

Very sincerely yours,

Erwin A. Raeth  
Diplom-Kaufmann (Univ.), MBA

*"One man with courage makes a majority"*

Andrew Jackson

# **Exhibit B**

### **Attention:**

Copy A of this form is provided for informational purposes only. Copy A appears in red, similar to the official IRS form. The official printed version of Copy A of this IRS form is scannable, but the online version of it, printed from this website, is not. Do **not** print and file copy A downloaded from this website; a penalty may be imposed for filing with the IRS information return forms that can't be scanned. See part O in the current General Instructions for Certain Information Returns, available at [www.irs.gov/form1099](http://www.irs.gov/form1099), for more information about penalties.

Please note that Copy B and other copies of this form, which appear in black, may be downloaded and printed and used to satisfy the requirement to provide the information to the recipient.

To order official IRS information returns, which include a scannable Copy A for filing with the IRS and all other applicable copies of the form, visit [www.IRS.gov/orderforms](http://www.IRS.gov/orderforms). Click on [Employer and Information Returns](#), and we'll mail you the forms you request and their instructions, as well as any publications you may order.

Information returns may also be filed electronically using the IRS Filing Information Returns Electronically (FIRE) system (visit [www.IRS.gov/FIRE](http://www.IRS.gov/FIRE)) or the IRS Affordable Care Act Information Returns (AIR) program (visit [www.IRS.gov/AIR](http://www.IRS.gov/AIR)).

See IRS Publications 1141, 1167, and 1179 for more information about printing these tax forms.

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RECIPIENT'S/LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		OMB No. 1545-0901 <b>2018</b> Form <b>1098</b>		<b>Mortgage Interest Statement</b>  <b>Copy A</b> <b>For Internal Revenue Service Center</b>  <b>File with Form 1096.</b>  For Privacy Act and Paperwork Reduction Act Notice, see the <b>2018 General Instructions for Certain Information Returns.</b>
		<b>1</b> Mortgage interest received from payer(s)/borrower(s) \$		
<b>RECIPIENT'S/LENDER'S TIN</b>	<b>PAYER'S/BORROWER'S TIN</b>	<b>2</b> Outstanding mortgage principal as of 1/1/2018 \$	<b>3</b> Mortgage origination date	
		<b>4</b> Refund of overpaid interest \$	<b>5</b> Mortgage insurance premiums \$	
<b>PAYER'S/BORROWER'S name</b>		<b>6</b> Points paid on purchase of principal residence \$		
Street address (including apt. no.)		<b>7</b> <input type="checkbox"/> If address of property securing mortgage is the same as PAYER'S/BORROWER'S address, check the box, or enter the address or description in box 8.		
City or town, state or province, country, and ZIP or foreign postal code		<b>8</b> Address or description of property securing mortgage (see instructions)		
<b>9</b> Number of properties securing the mortgage	<b>10</b> Other			
Account number (see instructions)				

Form **1098**

Cat. No. 14402K

www.irs.gov/Form1098

Department of the Treasury - Internal Revenue Service

**Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page**

RECIPIENT'S/LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		<b>*Caution:</b> The amount shown may not be fully deductible by you. Limits based on the loan amount and the cost and value of the secured property may apply. Also, you may only deduct interest to the extent it was incurred by you, actually paid by you, and not reimbursed by another person.		OMB No. 1545-0901  <b>2018</b>  Form <b>1098</b>	<b>Mortgage Interest Statement</b>  <b>Copy B For Payer/ Borrower</b>  The information in boxes 1 through 9 is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if the IRS determines that an underpayment of tax results because you overstated a deduction for this mortgage interest or for these points, reported in boxes 1 and 6; or because you didn't report the refund of interest (box 4); or because you claimed a nondeductible item.
		<b>1</b> Mortgage interest received from payer(s)/borrower(s)* \$			
RECIPIENT'S/LENDER'S TIN	PAYER'S/BORROWER'S TIN	<b>2</b> Outstanding mortgage principal as of 1/1/2018 \$	<b>3</b> Mortgage origination date		
		<b>4</b> Refund of overpaid interest \$	<b>5</b> Mortgage insurance premiums \$		
PAYER'S/BORROWER'S name		<b>6</b> Points paid on purchase of principal residence \$			
Street address (including apt. no.)		<b>7</b> <input type="checkbox"/> If address of property securing mortgage is the same as PAYER'S/BORROWER'S address, the box is checked, or the address or description is entered in box 8.			
City or town, state or province, country, and ZIP or foreign postal code		<b>8</b> Address or description of property securing mortgage (see instructions)			
<b>9</b> Number of properties securing the mortgage	<b>10</b> Other				
Account number (see instructions)					

Form **1098**

(Keep for your records)

www.irs.gov/Form1098

Department of the Treasury - Internal Revenue Service

**Instructions for Payer/Borrower**

A person (including a financial institution, a governmental unit, and a cooperative housing corporation) who is engaged in a trade or business and, in the course of such trade or business, received from you at least \$600 of mortgage interest (including certain points) on any one mortgage in the calendar year must furnish this statement to you.

If you received this statement as the payer of record on a mortgage on which there are other borrowers, furnish each of the other borrowers with information about the proper distribution of amounts reported on this form. Each borrower is entitled to deduct only the amount he or she paid and points paid by the seller that represent his or her share of the amount allowable as a deduction. Each borrower may have to include in income a share of any amount reported in box 4.

If your mortgage payments were subsidized by a government agency, you may not be able to deduct the amount of the subsidy. See the instructions for Form 1040, Schedule A, C, or E for how to report the mortgage interest. Also, for more information, see Pub. 936 and Pub. 535.

**Payer's/Borrower's taxpayer identification number (TIN).** For your protection, this form may show only the last four digits of your TIN (SSN, ITIN, ATIN, or EIN). However, the issuer has reported your complete TIN to the IRS.

**Account number.** May show an account or other unique number the lender has assigned to distinguish your account.

**Box 1.** Shows the mortgage interest received by the recipient/lender during the year. This amount includes interest on any obligation secured by real property, including a home equity, line of credit, or credit card loan. This amount does not include points, government subsidy payments, or seller payments on a "buydown" mortgage. Such amounts are deductible by you only in certain circumstances. **Caution:** *If you prepaid interest in 2018 that accrued in full by January 15, 2019, this prepaid interest may be included in box 1. However, you cannot deduct the prepaid amount in 2018 even though it may be included in box 1.* If you hold a mortgage credit certificate and can claim the mortgage interest credit, see Form 8396. If the interest was paid on a mortgage, home equity, line of credit, or credit card loan secured by your personal residence, you may be subject to a deduction limitation.

**Box 2.** Shows the outstanding mortgage principal on the mortgage as of January 1, 2018.

**Box 3.** Shows the date of the mortgage origination.

**Box 4. Do not deduct this amount.** It is a refund (or credit) for overpayment(s) of interest you made in a prior year or years. If you itemized deductions in the year(s) you paid the interest, you may have to include part or all of the box 4 amount on the "Other income" line of your 2018 Form 1040. No adjustment to your prior year(s) tax return(s) is necessary. For more information, see Pub. 936 and Itemized Deduction Recoveries in Pub. 525.

**Box 5.** If an amount is reported in this box, it may qualify to be treated as deductible mortgage interest. See the 2018 Schedule A (Form 1040) instructions and Pub. 936.

**Box 6.** Not all points are reportable to you. Box 6 shows points you or the seller paid this year for the purchase of your principal residence that are required to be reported to you. Generally, these points are fully deductible in the year paid, but you must subtract seller-paid points from the basis of your residence. Other points not reported in box 6 may also be deductible. See Pub. 936 to figure the amount you can deduct.

**Box 7.** If the address of the property securing the mortgage is the same as the payer's/borrower's, either the box has been checked, or box 8 has been completed.

**Box 8.** This is the address or description of the property securing the mortgage.

**Box 9.** If more than one property secures the loan, shows the number of properties securing the mortgage. If only one property secures the loan, this box may be blank.

**Box 10.** The interest recipient may use this box to give you other information, such as real estate taxes or insurance paid from escrow.

**Future developments.** For the latest information about developments related to Form 1098 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/Form1098](http://www.irs.gov/Form1098).



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RECIPIENT'S/LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		OMB No. 1545-0901		<b>Mortgage Interest Statement</b>  <b>Copy C</b> <b>For Recipient/Lender</b>  For Privacy Act and Paperwork Reduction Act Notice, see the <b>2018 General Instructions for Certain Information Returns.</b>
		<div style="font-size: 2em; font-weight: bold;">2018</div> <div>Form <b>1098</b></div>		
1 Mortgage interest received from payer(s)/borrower(s)		2 Outstanding mortgage principal as of 1/1/2018		
\$		\$		
3 Mortgage origination date		4 Refund of overpaid interest		
		\$		
5 Mortgage insurance premiums		\$		
6 Points paid on purchase of principal residence		7 <input type="checkbox"/> If address of property securing mortgage is the same as PAYER'S/BORROWER'S address, check the box, or enter the address or description in box 8.		
\$		8 Address or description of property securing mortgage (see instructions)		
Street address (including apt. no.)				
City or town, state or province, country, and ZIP or foreign postal code				
9 Number of properties securing the mortgage				
10 Other				
Account number (see instructions)				

Form **1098**

www.irs.gov/Form1098

Department of the Treasury - Internal Revenue Service

## Instructions for Recipient/Lender

To complete Form 1098, use:

- The 2018 General Instructions for Certain Information Returns, and
- The 2018 Instructions for Form 1098.

To order these instructions and additional forms, go to [www.irs.gov/Form1098](http://www.irs.gov/Form1098).

**Caution:** Because paper forms are scanned during processing, you cannot file Forms 1096, 1097, 1098, 1099, 3921, 3922, or 5498 that you print from the IRS website.

**Due dates.** Furnish Copy B of this form to the payer by January 31, 2019.

File Copy A of this form with the IRS by February 28, 2019. If you file electronically, the due date is April 1, 2019. To file electronically, you must have software that generates a file according to the specifications in Pub. 1220. The IRS does not provide a fill-in form option for Copy A.

**Need help?** If you have questions about reporting on Form 1098, call the information reporting customer service site toll free at 866-455-7438 or 304-263-8700 (not toll free). Persons with a hearing or speech disability with access to TTY/TDD equipment can call 304-579-4827 (not toll free).

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

**1851 East First Street, Suite 1550, Santa Ana, California 92705-4067**

A true and correct copy of the foregoing document entitled (*specify*):

**REPLY IN SUPPORT OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

### **1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*)

**01/26/18**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Brian C Andrews** elizabeth@briancandrews.com, andrewslawgroupinc@gmail.com;r44711@notify.bestcase.com
- **Thomas H Casey (TR)** msilva@tomcaseylaw.com, thc@trustesolutions.net
- **Rafael R Garcia-Salgado** rgarcia@bwslaw.com, bantle@bwslaw.com, rjr-nef@bwslaw.com
- **Richard J Reynolds** rreynolds@bwslaw.com, psoeffner@bwslaw.com, tmims@bwslaw.com,rjr-nef@bwslaw.com;fcabezas@bwslaw.com
- **Andrew A Smits** , kimberly@smits-law.com
- **United States Trustee (SA)** ustpregion16.sa.ecf@usdoj.gov
- **Gilbert R Yabes** ecfcacb@aldridgepite.com, GRY@ecf.inforuptcy.com;gyabes@aldridgepite.com

☐ Service information continued on attached page

### **2. SERVED BY UNITED STATES MAIL:**

On (*date*) **01/26/18**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**Michael Joseph Ruffner**  
4829 Camino Costado  
San Clemente, CA 92673

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE  
TRANSMISSION OR EMAIL** (state method for each person or entity served):

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 01/26/18, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Hon. Erithe A. Smith**

411 West Fourth Street, Suite 5040 / Courtroom 5A  
Santa Ana, CA 92701-4593

☐ Service information continued  
on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

01/26/18  
*Date*

Bernadette C. Antle  
*Printed Name*

  
*Signature*